

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** James N. Bidwell

**Date application filed with the Town Clerk:** March 17, 2009

**Nature of request:** Request Special Permit to modify ZBA FY2003-00037 under Section 10.33 and to increase the size of an existing supplemental apartment, and Section 9.22 to alter and enlarge a non-conforming building with no change to building footprint.

**Address:** 170 Pine Street (Map 5B, Parcel 48, R-N Zoning District).

**Legal notice:** Published March 18, 2009 and March 25, 2009 in the Daily Hampshire Gazette and sent to abutters on April 7, 2009

**Board members:** Thomas Simpson, Barbara Ford, Hilda Greenbaum

**Submissions:**

- One (1) copy of Memorandum ZBA FY2009-00030, prepared by staff, dated March 27, 2009;
- One (1) copy of the ZBA application filed with the Town Clerk, March 18, 2009;
- One (1) copy of a Project Description prepared by Integrity Development & Construction, Inc.;
- One (1) copy a separate Management Plan prepared by Integrity Development & Construction, Inc.;
- One (1) copy of GIS map showing the subject property;
- One (1) copy of an existing and proposed Site Plan, prepared by Eco Plan, LLC, submitted by Integrity Development and Construction;
- One (1) copy of existing condition floor plans, proposed floor plans dated March 2, 2009 and elevations prepared by Integrity Development and Construction, last revised March 25, 2009;
- One (1) copy of the Special Permit ZBA FY2003-00037, with approved plans, submitted by staff;
- One (1) copy of the Decision, ZBA FY2008-00006, for withdrawal without prejudice, with submitted plans, submitted by staff.

For the Public Hearing, Integrity Development and Construction provided the following:

- One (1) copy of an updated, oversized site plan, titled New Site Plan prepared, dated September 14, 2007;
- One (1) copy of updated elevations, prepared by Integrity Development and Construction, last revised on March 25, 2009;
- One (1) copy of updated floor plans, prepared by Integrity Development and Construction, last revised on March 25, 2009.

**Site Visit:** March 30, 2009

The Board members met with Don Putnam of Integrity Development and Construction and Jamie Bidwell on the property. They observed the following:

- A triangular lot located at the corner of a busy east-west road (Pine Street) and a steeply descending road going in a north-easterly direction (State Street);

- The driveway located in front of the two-story garage with improved surfaces and designated parking for four (4) vehicles;
- The existing stairway on the east side of the garage used to access the existing supplemental apartment;
- A precipitous drop in elevation (embankment) close to the back of the garage onto State Street;
- An existing, dilapidated, 3 sided storage structure with a roof positioned in very close proximity to the property line and top of embankment;
- An unregistered RV, a trailer containing an abandoned oil tank and other miscellaneous debris located to the east side of the garage and near the neighboring property line;
- The location of the proposed second floor addition over the rear of the existing one story garage;
- The location of the proposed expanded deck area to be connected to the existing stairway and deck providing access to the supplemental apartment.

**Public Hearing:** April 2, 2009

The application was presented by Peter Jessop, President of Integrity Development and Construction. Mr. Jessop was accompanied by Heidi Flanders, Project Designer and Anna Novey, Project Manager.

Mr. Jessop stated the following:

- Integrity Development and Construction is representing the owner, Jamie Bidwell;
- His firm was involved in the original project [ZBA FY2003-00037] to renovate the second floor of the garage to create a supplemental apartment;
- His firm was not involved in the subsequent application [ZBA FY2008-00006] which proposed additions to the dwelling and a deck;
- Mr. Bidwell's request is fairly straightforward; He would like to add additional square footage to the apartment;
- With the expansion, the apartment would be 787 square feet where 800 square feet is allowed in the Bylaw;
- The building is pre-existing and non-conforming and the applicant is required to obtain a Special Permit to modify the existing Special Permit;
- The proposal is to modify the building so that there is no increase in the degree of non-conformity;
- The building would be extended in the back and maintain the same plane as the existing roof line to create additional living space on the second floor.

Ms. Greenbaum noted that during the site visit there was confusion regarding the location of the door shown on the "left" elevation. Mr. Jessop and Ms. Flanders, referencing the elevations provide to the Board, explained that the elevation is a cross-section and the door is actually on the inside of the building. It was included on the plan to show that a door exists in that location. Mr. Jessop clarified that the door is not visible from the outside looking at the side of the building.

Mr. Simpson asked how many people would be living in the supplemental apartment. Mr. Jessop responded that three (3) people will reside in the apartment including Mr. Bidwell and his two (2) children.

Mr. Simpson asked if there will be more than one person living in the main house. Mr. Jessop stated that he does not know Mr. Bidwell's intention for the main house. Mr. Jessop stated that he understands that Mr. Bidwell, the owner, intends to occupy the supplemental apartment.

Ms. Ford asked if any family members will be in the main house. Mr. Jessop responded that he doesn't believe that Mr. Bidwell is committed to doing that.

Ms. Ford stated that she understood the Bylaw to require the supplemental apartment to be connected to a main dwelling, and that the owner usually occupies the larger portion.

Mr. Simpson stated that usually the owner occupies the larger portion, but the Bylaw does not require that arrangement. He added that he thought that the purpose of the original permit was for the apartment to be used by Mr. Bidwell's mother.

Mr. Jessop clarified that Mr. Simpson was referring to the previous application and that he doesn't know what Mr. Bidwell's current intention is for the main house. He added that he doesn't believe Mr. Bidwell will make a commitment that only family members will live in the main house and the apartment.

Ms. Greenbaum stated that this proposal becomes an owner-occupied two-family dwelling.

Mr. Jessop responded that the proposal is to create a supplemental apartment, under 800 square feet in size attached to the existing dwelling as required in the Bylaw.

Mr. Simpson stated that by definition it is a supplemental apartment, but in reality it could be a two-family dwelling and asked how many bedrooms are in the main house.

Mr. Jessop stated that there are two (2) bedrooms in the main house, fewer than in the supplemental apartment. He added that the application in 2008, in which he was not involved, stated that there are two (2) bedrooms in the house and that proposal was to increase the number of bedrooms to 4 or 5.

Staff read from Section 5.01112 of the Bylaw that "one of the dwelling units shall be occupied by the owner of the principal single family residence, which requirement shall be made a condition of any Special Permit issued under this section" meaning that the owner of the property must live in one of the units.

Mr. Jessop stated that Mr. Bidwell certainly understands that requirement.

Ms. Ford stated that in the previous application the owner was Mr. Bidwell's mother. She asked who currently owns the home. Mr. Jessop stated that he believes Mr. Bidwell is one of the owners.

Ms. Weeks asked Mr. Jessop for clarification on how the egress was arranged in the interior stairway, which is inside the garage.

Ms. Flanders explained that the updated proposed floor plan, as shown, provides an enclosed staircase and an exit door into the garage as well as to the exterior.

Ms. Weeks stated that it appears the north exterior wall, is extending past the existing wall below. She stated that the setback is measured from the farthest extending portion of the building. Mr. Jessop stated that they carefully reviewed this design and that it will be no more non-conforming than the existing overhang. Ms. Weeks asked about the depth of the foundation and whether there would be any activity that could affect the slope.

Mr. Jessop stated that he believes that there are no concerns with the foundation and that they would be happy to confirm this as the ground begins to thaw.

Ms. Ford stated that her main concern is the issue of what will happen with the main house and if the apartment is really supplemental.

Mr. Simpson stated that if this were a two-family dwelling, the lot area of the property would have to be 26,000 square feet where as this property is only 16,000 square feet.

Ms. Greenbaum stated that the Board can limit the number of tenants in the main house to two people.

Mr. Simpson stated that a three (3) bedroom supplemental apartment is a stretch of the definition.

Mr. Jessop stated that the Bylaw does not have any requirements for the number of bedrooms. Mr. Simpson agreed and noted that the Board is allowed to use its judgment to determine the appropriateness of the use.

Staff indicated that what usually triggers the two-family designation is a unit that is greater than 800 square feet and that the Bylaw intended to have a unit less than 800 square feet be considered a supplemental apartment.

Ms. Ford stated that there has been a lot of progress on the condition of the property since the previous application but noted that the yard should be cleaned up further, including relocating or removing the RV and stated that the second shed on the property should be removed.

Ms. Greenbaum agreed with Ms. Ford and stated that the RV does not look drivable and that the oil tank and the second shed, that were visible during the site visit, should be removed from the property.

Mr. Jessop stated that Mr. Bidwell might be agreeable to conditions related to the exterior of the property, but added that it would up to Mr. Bidwell to decide whether or not to implement the conditions, appeal the decision or not do the project.

Mr. Simpson asked about the purpose of the addition. Mr. Jessop stated that he understands that Mr. Bidwell intends to move into the supplemental apartment with his two teenage children because it is more economically feasible than living in the main house, which he may rent.

Ms. Greenbaum stated that of the other supplemental apartment application she has heard, the Board has limited the number of people and in this case they may want to limit the number of people in both units.

Mr. Simpson stated that the Board also needs to identify that the addition is not detrimental to the neighborhood or make the building more non-conforming to the setbacks.

Ms. Ford stated that the applicant has carefully considered the addition and designed it so that it doesn't increase the footprint. She stated that the improvements won't be seen from Pine Street and there are other buildings in the neighborhood that are equally non-conforming.

Ms. Greenbaum spoke to whether the proposal is detrimental to the neighborhood and stated that the litter in the yard should be cleaned up and that the oil tank, camper, trailer and shed should be removed.

Ms. Ford stated that the second shed is non-conforming because it is located on the property line.

Mr. Simpson asked about the proposed expansion of the existing second floor deck. Mr. Jessop stated that the deck is part of the stairway and access to the second floor entrance of the existing supplemental apartment. He added that the additional deck area, as shown on the site plan, will meet the required setbacks and requires only one hole to be excavated for a new support beam.

Ms. Ford asked if the ground is stable in that location and whether it would affect the stability of the slope. Mr. Jessop stated that it is only a 10" hole and is set back almost 20 feet from the top of the slope.

There were no members of the public present to speak to this application.

Ms. Ford made a motion to close the evidentiary portion of the public hearing. Ms. Greenbaum seconded the motion. The Board voted unanimously to close the public hearing.

**Public Meeting:**

The Board spent the remainder of the public meeting crafting conditions of the Special Permit.

The Board discussed limiting the number of adults allowed to occupy the main house. Mr. Simpson suggested that there shall be no more than two (2) unrelated adults or one (1) family [as defined in Section 12.141 "a group of persons related by marriage, blood and/or adoption residing together in one dwelling unit"] allowed to occupy the main house. Ms. Greenbaum stated the Board should not allow four (4) unrelated adults but agreed with allowing a family.

The Board discussed requiring the removal of various items from the property as conditions of the Special Permit. Ms. Ford stated that the shed should be removed. The Board identified that the shed is non-conforming as to the setback, is in poor condition and contributes to the unkempt nature of the property which is detrimental to the neighborhood.

The Board determined that as a condition of the approval they will require the removal of the shed, oil tank and trailer prior to the issuance of a Certificate of Occupancy for the supplemental apartment.

Ms. Greenbaum stated that the RV should be removed. She added that the RV does not look like it could pass inspection in order to be registered. Mr. Jessop suggested that the Board should not require something that is regulated by other Town Bylaws. In reference to the RV, Mr. Simpson stated that there is a Town Bylaw which restricts the keeping of unregistered vehicles on private property. Ms. Ford suggested making the condition relate to whether or not the vehicle is seasonally registered.

The Board determined that there shall be no vehicles parked in undesignated spaces and no unregistered vehicles allowed on the property.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The supplemental apartment is suitably located in the neighborhood and is compatible with existing uses in the Zoning District. The Special Permit authorizes the expansion of an existing supplemental apartment in accordance with the requirements of Section 5.014 of the Zoning Bylaw. The proposal is suitably located in the neighborhood, which contains other single and multiple family dwellings. The expansion of the non-conforming structure does not increase the footprint of the non-conforming building, lot size, and the permit requires the removal of a non-conforming storage structure.

10.382 and 10.385 – The proposed use would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The Special Permit requires the removal of a non-conforming storage structure located in very close proximity to the property line along State Street and requires the removal of other items from the property. The permit requires there be no un-registered vehicles kept on the property in accordance with Town Bylaws. The permit identifies a designated parking area for vehicles associated with the residential uses.

10.383 and 10.387 – The proposed would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. The Special Permit identifies a designated parking area for vehicles associated with the residential use and is large enough to eliminate the need for vehicles to back out onto Pine Street.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The size of the addition will result in a supplemental apartment that is less than the maximum size allowed. The Special Permit requires parking two (2) parking spaces per dwelling unit as required in Section 7.000 of the Zoning Bylaw.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. The approved Management Plan identifies the storage of refuse and recyclables will be in the enclosed garage and is removed weekly by a trash hauling company. The property is connected to town water and sewer.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. The approved Management Plan identifies that the property owner is responsible for maintenance and upkeep of all existing landscaping and vegetation on the property.

10.395 – The proposed use does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. The Special Permit allows for the expansion of an existing supplemental apartment in a non-conforming building such that there is no increase in the footprint of the building. The Special Permit requires the exterior of the existing dwelling and new addition maintain matching exteriors including color and materials.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The Special Permit provides parking spaces for two (2) residential dwelling units in accordance with the Zoning Bylaw. The expanded supplemental apartment is less than the maximum size allowed in the Zoning Bylaw. The Board has determined that the addition to the non-conforming dwelling will not be substantially more detrimental to the neighborhood because it does not involve any expansion of the footprint of the building and the permit requires the removal of a non-conforming storage structure.

**Public Meeting – Zoning Board Decision**

Mr. Simpson made a motion to APPROVE the permit, with conditions. Ms. Ford seconded the motion.

For all the reasons stated above, the Amherst Zoning Board of Appeals VOTED unanimously to grant a Special Permit, ZBA FY2009-00030, to allow the modification of ZBA FY2003-00037, to allow an expansion to an existing supplemental apartment in a non-conforming structure, with no expansion of the existing footprint, under Section 9.22 of the Zoning Bylaw, as applied for by Jamie Bidwell, at 170 Pine Street (Map 5B, Parcel 48, R-N Zone), with conditions.

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THOMAS SIMPSON

\_\_\_\_\_  
BARBARA FORD

\_\_\_\_\_  
HILDA GREENBUAM

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2009.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00030, to allow the modification of ZBA FY2003-00037, to allow an expansion to an existing supplemental apartment in a non-conforming structure, with no expansion of the existing footprint, under Section 9.22 of the Zoning Bylaw, as applied for by Jamie Bidwell, at 170 Pine Street (Map 5B, Parcel 48, R-N Zone), with the following conditions:

1. The supplemental apartment shall be built according the floor plans and elevations prepared by Integrity Development and Construction last revised on March 25, 2009 and the site plan prepared by Eco Plan, LLC and stamped approved by the Zoning Board of Appeals dated April 2, 2009.
2. The supplemental apartment shall be managed as described in the Management Plan prepared by Integrity Development and Construction and stamped approved by the Zoning Board of Appeals dated April 2, 2009.
3. The existing non-conforming shed and oil tank shall be removed prior to the issuance of a Certificate of Occupancy for the supplemental apartment.
4. The supplemental apartment shall be owner occupied.
5. The parking apron shall not be closer than 20 feet from Pine Street.
6. All vehicles on the property shall be parked in designated parking areas, as shown on the approved site plan.
7. There shall be no unregistered vehicles stored on the property.
8. There shall be no more than two (2) unrelated adults or one (1) family, as defined in Section 12.141 of the Zoning Bylaw, allowed to occupy the main house.
9. The exterior of the existing dwelling and new addition shall maintain matching exteriors including color and materials.
10. There shall be a reflective street number installed adjacent to Pine Street which shall be visible in both directions.
11. The owner shall register any rental unit with the Board of Health.
12. Any exterior lighting shall be downcast.
13. The name, address and telephone number of the property owner shall be provided to the Building Inspections Department, Fire Department and Health Department and shall be kept current.
14. The permit shall expire upon change of ownership.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE